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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,577	03/15/2004	Marc Tillis	LL11.12-0103	1712
54704 7590 03/27/2008 LAW OFFICE OF PHILLIP F. FOX 10985 40TH PLACE NORTH PLYMOUTH, MN 55441				
EXAMINER				
WEIER, ANTHONY J				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
03/27/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/800,577

**Applicant(s)**

TILLIS, MARC

**Examiner**

Anthony Weier

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 7, 8, 14-16 and 44-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-13, 17-43 and 53-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/888)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6, 9-13, 17, 18, 22-26, 28, 29, 33-38, 41, 43, 53-56, 59-64, 67, and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 2001-45959 (JP '959).

JP '959 discloses a food comprising whole eggs (inherently fluid and flowable; e.g. 45%) which are mixed with a water absorbent thickener (i.e. bread crumb; e.g. 1%), wheat flour (including starch which would inherently provide stabilizing), water (or, in the alternative, milk), and then pieces of supplemental food such as fruit, chocolates, raspberry puree which are also mixed homogeneously throughout the food wherein the mixed ingredients are then baked. It is expected that the bread crumbs would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbance is modest. The egg material will coagulate during baking and it is expected that due to the presence of the starch therein that said product would exhibit some freeze/thaw stability.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22-26, 28, and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over by JP 63-216455 (JP '455).

JP '455 discloses a process of preparing a food wherein an egg solution is blended with a cooked water-absorbent material (bread crumbs) wherein same is heated and coagulated. It is expected that the bread crumbs would possess the particular absorbing ability as set forth, for example, in claim 26 as such degree of absorbance is modest.

The claims further call for the particular amounts of egg and water absorbing thickener. Although, the amount of egg material would naturally fall within the range of the instant claims, the recited amount of water absorbing thickener (i.e. bread crumbs) in JP '455 is higher than that called for in the instant claims. However, it should be noted that JP '455 describes this amount of water absorbing thickener as being "preferably" used, Thus leaving open the use of other amounts of water absorbing thickener. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at the amount of water absorbing thickener as called for in the instant claims as a result effective variable depending on, for example, the particular degree of breading texture desired in the final food product.

5. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001-45959.

The claims further call for the particular amount of stabilizer used. However, such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious to have arrived at

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such amounts through routine experimental optimization.

6. Claims 19, 20, 30-32, 39, 40, 57, 58, 65, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 63216455 taken together with either one of Hudson et al (U.S. Patent No. 7264840), Wiker et al (U.S. Patent No. 4421770) or Rapp et al.

The claims further call for batter and/or breading on the outside of the egg product wherein said food is fried. However, it is well known to batter/bread and then fry egg products as taught, for example, by any one of Hudson et al, Wiker et al, and Rapp et al (see examples in each). It would have been obvious to one having ordinary skill in the art at the time of the invention to have batter and/or breaded the product of JP '455 and frying same as a matter of preference depending on the particular texture, appearance, and flavor desired in the final product.

### ***Applicant's Arguments***

7. Applicant's arguments filed 12/31/07 have been fully considered but they are not persuasive other than the arguments regarding Frattinger et al, Pfeiffer, and JP 02069166 wherein the rejections regarding same have been withdrawn.

Applicant argues that JP '959 does not have the yellow-white appearance of an egg, the consistency of a cooked egg, and the taste of a cooked egg. It should be noted that none of these argued attributes are disclosed in the instant claims. As set forth in the rejections above, JP '959 discloses the particular amounts of egg and water absorbing thickener as called for in the instant claims.

All other arguments have been addressed in view of the rejections as set forth above.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action because by providing the amounts of thickener and egg in the final product the scope of the final product has been narrowed and thus providing a product more susceptible to being batter coated and/or breaded and then fried, thus not only requiring an updated search regarding the particular relative composition of the egg product but also that such composition included the batter/breaded coating and fried attributes further called for in the instant claims. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
Primary Examiner  
Art Unit 1761

/Anthony Weier/  
Primary Examiner, Art Unit 1794

Anthony Weier  
March 24, 2008

